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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,008	08/26/2003	David B. Dwyer	H0004368	6065

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EXAMINER

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3663

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/650,008
Filing Date: August 26, 2003
Appellant(s): DWYER, DAVID B.

Paul D. Amrozowicz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 5, 2006 appealing from the Office action mailed June 2, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6181987

DEKER ET AL

1-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Limitation of Claim 1.	Deker et al. (6,181,987)
An aircraft flight management display system for displaying air traffic control clearance messages transmitted to an aircraft, the system comprising:	Deker discloses (Fig. 1) an aircraft flight management display system (flight management system 14) for displaying on a display (11) air traffic control clearance messages (Fig. 2, textual message 28) transmitted to an aircraft through a radio transmitting/receiving device (Fig. 1, X/R 15). See column 4, line 25 to column 5, line 13).
a processor <u>adapted</u> to receive (i) data representative of a current aircraft flight plan and (ii) one or more textual clearance message signals representative of the	Deker discloses (Fig. 1) a processor (computer 2) adapted to receive (i) data representative of a current aircraft flight plan (Fig. 2 shows in screen (21) an aircraft (20) and the current flight plan (19)) and (ii) one or more clearance messages representative of the air traffic control

<p>air traffic control clearance messages</p> <p>and <u>operable</u>, in response thereto, to supply one or more flight plan display commands and one or more clearance message display commands; and</p>	<p>clearance messages being display in the textual message displaying area (28). See column 5, lines 5-13; column 6, lines 17-43).</p> <p>Deker discloses (Fig. 2) the processor (computer 2) operable to supply one or more flight plan display commands (Fig. 2 shows on screen (24) a flight plan display command (DIVersion command); Fig. 3 shows on screen (33) a FLIGHT PLAN SELECTION command, and screen (35) shows a modify flight plan (MODIFY FPLN) command; Fig. 4 shows on screens (40 and 41) an AVOID command).</p> <p>Deker further discloses (Fig. 2, screens 24 and 26) one or more clearance message display commands (EXPLAIN). See column 6, lines 27-35.</p>
<p>a display couple to receive the flight plan display commands and the</p>	<p>Deker discloses (Fig. 2) a display (11) coupled to receive the flight plan</p>

clearance message display commands and <u>operable</u>, in response thereto,	display commands (i.e., DIV, BASIC, FPLN, AVOID, as mentioned above) and clearance message display commands (EXPLAIN). See column 6, lines 27-25.
to substantially simultaneously display (i) one or more images representative of the current aircraft flight plan and (ii) the textual air traffic clearance messages.	Deker further discloses (Fig. 2) simultaneously display (i) one or more images representative of the current aircraft flight plan (19) and (ii) the textual air traffic clearance messages in textual message display windows (28 and 31).

Furthermore, the statements of intended use or field of use, “operable to”, “adapted to”, or “capable of” clause are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647.

See MPEP 2114:

"A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ 2nd 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ 2nd 1525, 1528."

As set forth in MPEP 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Regarding claims 2, Deker discloses (Fig. 3) the display (11) can "operable" to display one image representative of a modified aircraft flight plan (MODIFY FPLN), when the textual air traffic clearance message indicates the current aircraft flight plan should be modified (Column 7, lines 39-55).

Regarding claim 3, Deker further discloses (Fig. 1) a user interface (touch display unit 13) configured to receive user input (Column 3, lines 61-64); and it is inherent that this user interface (13) "operable" to supply one clearance message user response

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signals and further “operable” to transmit a response to the displayed textual air traffic control message (Column 4, lines 3-48).

Regarding claim 4, Deker discloses (Fig. 3) the user interface (13) is further “operable” to supply one more flight plan modification signals (MODIFY FPLN); and

The processor (computer 2) is further inherently “operable” to transmit a textual signal representative of flight plan modification (Column 7, lines 39-55).

Regarding claim 5, the processor (2) is inherently “operable” to supply flight plan modification display; and

the display (Fig. 3) is inherently display one image representative of the modified flight plan (screen 35 is the representative of the current aircraft flight plan (active flight plan) and the modified flight plan (selected flight plan)) (Column 5, lines 5-13 and Column 7, lines 39-55).

Regarding claim 6, Deker discloses (Fig. 3) the display is inherently “operable” to simultaneously display the images (screen 35) representative of the current aircraft flight plan (active flight plan) and the modified flight plan (selected flight plan) (Column 7, lines 50-53).

Regarding claim 7, it is inherent that the processor (computer 2) is “operable” to automatically update the current flight plan consistent with the transmitted response to the displayed air traffic control message (Column 7, lines 39-53).

Regarding claim 8, Deker further discloses (Figs. 3 and 4) the display is inherently “operable” to selectively display a user interface field (BASIS, DIV, COMPARE, EXPLAIN, AVOID) that allows a user (the pilot) to respond to the displayed textual traffic control message via the user interface (Column 6, lines 27-49; and column 8, lines 1-19).

Regarding claim 9, Deker further discloses (Fig. 1) a user interface (touch display unit 13) configured to receive user input (Column 3, lines 61-64); and it is inherent that this user interface (13) “operable” to supply one flight plan modification command signals (MODIFY FPLN); and

wherein the processor (computer 2) is further inherently “operable” to modify flight plan display commands and one clearance message display commands (Column 7, lines 39-53); and

wherein the display (Fig. 3) is inherently “operable” to simultaneously display the images (screen 35) representative of the current aircraft flight plan (active flight plan) and the modified flight plan (selected flight plan) (Column 7, lines 50-53).

Regarding claim 10, Deker discloses (Fig. 1) a navigation database (3 and 16).

Regarding claim 11, Deker further discloses (Figs. 1-4) avionics data (Column 7, lines 1-15); wherein the display (Fig. 3) is inherently "operable" to simultaneously display the images (screen 35) representative of the current aircraft flight plan (active flight plan) and the modified flight plan (selected flight plan) (Column 7, lines 50-53).

Regarding claim 12, Deker teaches one of the image representative of the current flight plan is a lateral map image (navigation map) (Column 4, line 53 to column 5, line 3).

(10) Response to Argument

Appellants argue, at pages 3-4, by asserting that

“Appellants submit that the Examiner has not met his burden in establishing a prima facie case of anticipation, since the reference the Examiner relies does not discloses, either expressly or inherently, each and every element recited in at least independent Claim 1”. The examiner respectfully disagrees.

Please note the line-by-line comparison between the limitation of claim 1 and the Deker reference as set forth below:

Limitation of Claim 1.	Deker et al. (6,181,987)
An aircraft flight management display system for displaying air traffic control clearance messages transmitted to an aircraft, the system comprising:	Deker discloses (Fig. 1) an aircraft flight management display system (flight management system 14) for displaying on a display (11) air traffic control clearance messages (Fig. 2, textual message 28) transmitted to an aircraft through a radio transmitting/receiving device (Fig. 1, X/R 15). See column 4, line 25 to column 5, line 13).
a processor <u>adapted</u> to receive	Deker discloses (Fig. 1) a processor (computer 2) adapted to receive

<p>(i) data representative of a current aircraft flight plan and</p> <p>(ii) one or more textual clearance message signals representative of the air traffic control clearance messages</p> <p>and <u>operable</u>, in response thereto, to supply one or more flight plan display commands and one or more clearance message display commands; and</p>	<p>(i) data representative of a current aircraft flight plan (Fig. 2 shows in screen (21) an aircraft (20) and the current flight plan (19)) and</p> <p>(ii) one or more clearance messages representative of the air traffic control clearance messages being display in the textual message displaying area (28). See column 5, lines 5-13; column 6, lines 17-43).</p> <p>Deker discloses (Fig. 2) the processor (computer 2) operable to supply one or more flight plan display commands (Fig. 2 shows on screen (24) a flight plan display command (DIVersion command); Fig. 3 shows on screen (33) a FLIGHT PLAN SELECTION command, and screen (35) shows a modify flight plan (MODIFY FPLN) command; Fig. 4 shows on screens (40 and 41) an AVOID command).</p>
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	Deker further discloses (Fig. 2, screens 24 and 26) one or more clearance message display commands (EXPLAIN). See column 6, lines 27-35.
a display couple to receive the flight plan display commands and the clearance message display commands and <u>operable</u>, in response thereto,	Deker discloses (Fig. 2) a display (11) coupled to receive the flight plan display commands (i.e., DIV, BASIC, FPLN, AVOID, as mentioned above) and clearance message display commands (EXPLAIN). See column 6, lines 27-25.
to substantially simultaneously display (i) one or more images representative of the current aircraft flight plan and (ii) the textual air traffic clearance messages.	Deker further discloses (Fig. 2) simultaneously display (i) one or more images representative of the current aircraft flight plan (19) and (ii) the textual air traffic clearance messages in textual message display windows (28 and 31).

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Appellants argues, at pages 5-6, by asserting that the claims do not merely recite statements of intended use by incorporating the phrases “operable to,” “adapted to,” and “capable of.” The examiner respectfully disagrees.

The claim limitation that employ phrases of the type “adapted to”, “capable of”, “sufficient to”, and for” doing something are typical of claim limitations, which may not distinguish over the prior art. It has been held that the recitation that an element is “adapted to” perform or is “capable of” performing a function is not a positive limitation, but only requires the ability to so perform.

Furthermore, if the prior art fails to discuss the intended use and the examiner has a basis for asserting that prior art product is “capable of” performing in the claimed manner, the claims should be rejected.

“The recitation of a new intended use for an old product does not make a claim to that old product patentable.” *In re Schreiber*, 44 USPQ 2nd 1429 (Fed. Cir. 1977).

The statements of intended use or field of use, “operable to”, “adapted to”, or “capable of” clause are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In*

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re Finsterwalder, 168 USPQ 530; In re Casey, 512 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647.

Appellants argue, at pages 6-7, by asserting that "Deker et al. does not disclose every element recited in independent claim 1". The examiner respectfully disagrees.

Deker clearly discloses every limitation recited in claim 1 in the examiner comparison table as set forth above.

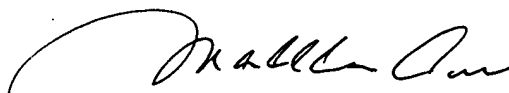
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Matthew Luu



MATTHEW LUU
PRIMARY EXAMINER

Conferees:

Jack Keith (SPE)



Meredith Petravick

